

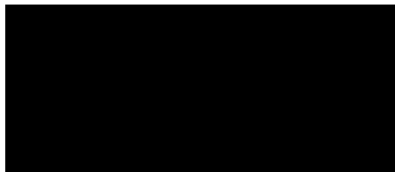
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



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DATE: SEP 16 2011 Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa, and the Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The petitioner subsequently filed a second appeal, which the AAO rejected as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I). The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its vice president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of New Jersey, operates a hotel, and claims to be engaged in commercial and real estate dealings. The beneficiary was previously granted one year in L-1A classification in order to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay for three additional years.

The director denied the petition on April 10, 2008, concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The AAO dismissed the petitioner's subsequent appeal and affirmed the director's determination in a decision dated September 30, 2008. The AAO further found that the petitioner failed to establish that the U.S. company had been doing business for the year prior to filing the extension request, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B), and denied the petition for this additional reason.

On November 3, 2008, the petitioner filed its second appeal. The petitioner indicated on Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or additional evidence to the AAO within 90 days, but no brief or evidence was submitted within the stated time period.

On June 30, 2009, the AAO rejected the petitioner's appeal, noting that it does not exercise appellate jurisdiction over AAO decisions. The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1; 8 C.F.R. § 103.3(a)(iv). Accordingly, the appeal was not properly before the AAO, and the AAO rejected it as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The AAO noted in its decision that the petitioner did have the option of filing a motion to reopen or a motion to reconsider the AAO's decision within 33 days of service pursuant to 8 C.F.R. § 103.5. The AAO also reviewed the petitioner's appeal to determine whether it met the requirements of a motion, but found that it did not. In this regard, the AAO noted that, although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). As the petitioner submitted no brief, evidence or other argument in support of the appeal, the AAO concluded that it did not meet the requirements of either a motion to reopen or a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3) and (4).

The matter is now before the AAO on a combined motion to reopen and reconsider the appeal that was rejected as improperly filed.

According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding, in this case, the AAO.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (USCIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "A motion that does not meet applicable requirements shall be dismissed."

The instant motion consists of the petitioner's brief dated July 24, 2009. The purpose of a motion to reopen or motion to reconsider is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts or documented sufficient reasons, supported by pertinent precedent decisions, to warrant the re-opening or reconsideration of the AAO's decision to reject the petitioner's second appeal issued on June 30, 2009.

The petitioner asserts that its second appeal, filed in response to the AAO's June 30, 2008 decision to dismiss the initial appeal, "was a challenge to the dismissal decision of AAO and filed as such on the grounds of Abuse of discretion." The petitioner asserts that the AAO "conveniently ignore[d] all the facts and precedent court decisions on record . . . and proceed[ed] to dismiss the appeal as not properly filed?" The petitioner contends that such action was "a case of abuse of discretion."

The petitioner further objects to the AAO's conclusion that "[t]he petitioner's appeal must be rejected" noting that the use of the language "must be" suggests a pre-determined and "acrimonious" review of the matter. The petitioner asserts that the petitioner is in fact entitled to challenge an AAO decision when it believes that the decision constituted an abuse of discretion.

Finally, the petitioner emphasizes that the latest appeal was submitted to the Vermont Service Center, which then forwarded the appeal to the AAO. The petitioner argues that if the AAO does not exercise jurisdiction, then the Vermont Service Center or the AAO should have forwarded the appeal to the appropriate authority for further action. The petitioner claims that if there was any error in the handling of the appeal, it was the fault of USCIS and not the petitioner, and therefore the "denial of the petition as improperly filed is not only

erroneous but also gross injustice, again an acrimonious approach and the arbitrary denial – another instance of blatant abuse of discretion."

Upon review, the AAO properly rejected the petitioner's appeal as improperly filed. As discussed above, the AAO does not exercise appellate jurisdiction over AAO decisions. The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1; 8 C.F.R. § 103.3(a)(iv).

Further, the petitioner's argument that the Vermont Service Center or the AAO should have "forwarded the appeal to the appropriate authority" is without merit. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed, and therefore no "appropriate authority" for consideration of a second appeal filed with respect to the same petition. The Vermont Service Center properly forwarded the matter to the AAO because the AAO had issued the most recent decision and was therefore the reviewing official for any subsequent filing in connection to the petition.

The AAO agrees with the petitioner that it is entitled to challenge an AAO decision when it believes that the decision constituted an abuse of discretion. However, the only authorized administrative challenge to the dismissal of an appeal is to file a timely motion to reopen or reconsider according to the regulatory requirements set forth at 8 C.F.R. § 103.5. As discussed above, the petitioner's second appeal was not accompanied by any statement or evidence that met the requirements of a motion to reopen or reconsider. The petitioner's suggestion that the AAO was obligated to conduct a second *de novo* review of the entire record is misplaced. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a motion to reconsider is strictly limited to an examination of any purported misapplication of law or USCIS policy, which must be supported by precedent case law. The AAO previously conducted a *de novo* review of the entire record of proceeding, an appellate decision was issued, and the deficiencies were expressly stated.

In addition, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." The petitioner's motion does not contain this statement. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must be dismissed for this reason.

Finally, the AAO acknowledges that the petitioner once again requests an opportunity for oral argument before the AAO, "in the interest of justice." The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, pursuant to 8 C.F.R. § 103.3(b), U.S. Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. In this instance, the petitioner identified no unique factors or issues of law to be resolved. Moreover, the written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.